

Election/Restriction

In accordance with the election requirement, Applicant provisionally elects, with traverse, Species c, Subspecies ii.

In accordance with the Examiner's request, Applicant respectfully submits that claims 36, 38-44, 46, 49, 51, 53-58, 60, 69, and 73-76 read on the elected Species c, Subspecies ii.

REMARKS

The Examiner stated that the Application contains claims directed towards the following patentably distinct Inventions: Species a (Trap), Species b (Centrifuge), and Species c (Filter). The Examiner further stated that Applicant is required under 35 U.S.C. 121 to elected a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. The Examiner identified the following patentable distinct subspecies: Subspecies i (implanting harvested tissue fragments), Subspecies ii (implanting harvested tissue fragments and blood and/or fibrin for adhesions), and Subspecies iii (implanting harvested tissue fragments and synthetic substances for adhesion).

Accordingly, Applicant has provisionally elected Species c, Subspecies ii with traverse. Further, Applicant has provided a list of all claims readable thereon.

Applicant traverses the election of species requirement as unnecessary given that a significant number of claims are generic with respect to the three species set forth in the Office Action. Although the Examiner stated that there are no generic claims, Applicant respectfully submits that claims 36, 38-44, 49, 51, 53-57, 60, 69, and 73-76 are generic. These claims are not limited to any of the above species because they do not recite a trap, centrifuge, or filter. For example, claim 36 recites a separating step. This step could be performed by a trap, centrifuge, filter, or any other means disclosed or equivalent to those disclosed in the specification.

Furthermore, Applicant traverses the election of the species requirement, as the requirement is improper. Under the statute an application may properly be required to be restricted to one of two or more claimed inventions only if they are able to support separate patents and they are either independent (MPEP § 806.04 - § 806.04(i)) or distinct (MPEP

§ 806.05 - § 806.05(i)). MPEP § 803. If the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions. (Id.).

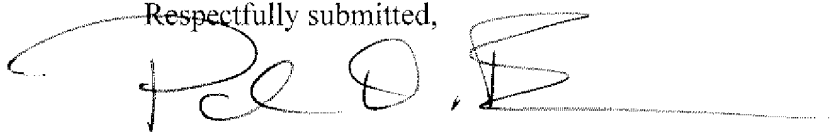
All the claims recite the steps of removing body tissue from the patient's body and implanting at least a portion of the removed tissue in the patient's body. Thus, regardless of whether all claims are examined together or separately, a review of the prior art for these claim recitations is required so that search and examination of all claims does not present a serious burden. Furthermore, this application has already undergone significant examination as several Office Actions have already been issued. This clearly demonstrates that all claims can (and already have been) examined on their merits.

Therefore, the Examiner has not demonstrated that the Application cannot be examined without a serious burden. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the election of Species and Subspecies requirement.

In light of the foregoing remarks, this application is now in condition for an examination on the merits, and early action is respectfully requested. If any questions remain regarding this response or the application in general, a telephone call to the undersigned would be appreciated since this should expedite the prosecution of the application for all concerned.

No fee is believed to be due. However, please charge required fees (or credit any overpayments of fees) to the Deposit Account of the undersigned, Account No. 503410 (Docket no. 780-A02-014-8).

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Paul D. Bianco', with a long horizontal line extending to the right.

Paul D. Bianco, Reg. # 43,500

Customer Number: 33771
Paul D. Bianco
FLEIT KAIN GIBBONS GUTMAN BONGINI & BIANCO
21355 East Dixie Highway, Suite 115
Miami, Florida 33180
Tel: 305-830-2600; Fax: 305-830-2605
e-mail: pbianco@focusonip.com